REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1, 3, 6-10, 12 and 13 are in this Application. Claims 1, 3, 10, 12 and 13 have been rejected under 35 U.S.C. § 112 first and second paragraphs. Claims 6-9 have been rejected under 35 U.S.C. § 102 and 103. Claims 2, 4, 5, 11 and 14 to 17 have been cancelled in a previous response. Claims 7-9 have now been cancelled without prejudice. Claims 1, 3, 7, 10, 12 and 13 and have been amended herewith.

35 U.S.C. § 112, Second Paragraph Rejections

The Examiner has rejected claim 3 for failing to particularly point out and distinctly claim the subject matter. Claims 3 and 12 have now been amended to recite: "wherein said inducing mutagenesis is via a T-DNA", providing proper antecedent basis for claims 3 and 12 in step (b) of independent claims 1 and 10, respectively and thereby overcoming the Examiner's rejection thereof on the basis of 35 U.S.C. § 112, second paragraph, rejections.

35 U.S.C. § 102 and 103(a), Rejections

The Examiner has rejected Claims 6-9 as being anticipated by (102), or, alternatively, as obvious (103(a)) over Kush et al (1985. Int Rice Comm. Newsletter 34(2): 11-126); Lahiri et al (1993, Bangladesh J Bot. 22(2): 167-172) or Privalov et al (1991, Genetika 27(3):450-457).

The Examiner's rejections are respectfully traversed. Claim 6 has been amended. Claims 7-9 have been cancelled, rendering mute the Examiner's rejections thereof.

Applicant submits that the Examiner has failed to provide evidence for a prima facie case of lack of novelty (102) or obviousness (103a). Amended claim 6 reads on a population of mutant miniature tomato plants having reduced size in comparison to commercial tomato plants, ability to produce viable seeds or tubers at a density of at least ten-fold higher than standard growth conditions at maturity, ability of crossing with a commercial tomato plant and carrying a mutation induced via a T-DNA or a transposon sequence.

Contrary to the Examiner's allegations, the rice plants disclosed by Kush et al., Lahiri et al. and Privalov et al. are not miniature mutants, but rather dwarfs. Whereas miniature plants are characterized by proportional reduction in the size of all plant structures, dwarf plants such as the IR36 rice cultivars disclosed by Kush et al., the IR8 and BINASAIL rice cultivars disclosed by Lahiri et al. and the wiry dwarf tomatoes disclosed by Privalov et al are characterized by shortened internodal distance, resulting in reduced plant height but no proportional reduction in size of the leafy structures, roots, fruit, panicle and grains of the dwarf mutants.

Yet further, and as a result of these differences between dwarf and miniature plants, dwarf plants cannot be cultivated to produce viable seeds or tubers at a density of at least ten-fold higher than standard growth conditions at maturity, as disclosed for the claimed miniature mutant plants. Thus, the dwarf rice plants of Kush et al., Lahiri et al. and the wilty dwarf of Privalov et al. are all lacking any or all of the features of the claimed mutant miniature plants, and as such do not, and cannot, neither alone or in combination, anticipate or render obvious the claimed mutant miniature plants.

Still further, amended claim 6 now reads on mutant miniature tomato plants, whereas Kush et al. and Lahiri et al. relate to rice, and lack any reference to or suggestion of tomato plants.

Regarding Privalov et al., the Examiner has alleged that Privalov teaches the production of mutant miniature tomato plants comprising the wilty dwarf mutation to produce a population of M1 mutagenized plants; and selection of mutant miniature tomato plant with the desired trait. However, the cited passage merely reports the treatment of seeds of wilty dwarf plants with gamma rays and GA3, resulting in suppression of the penetration of the dominant mutation (reversion). Thus, Privalov et al. selected for revertant tall plants that lost the wilty dwarf trait as a result of radiation and phytohormone application. Privalov et al. concluded that "the high concentration of the phytohormone GA3 exerts the opposite effect on penetration, stimulating penetration of recessive characters and suppressing that of dominant characters". Privalov et al is silent regarding mutant miniature plants, selection of mutagenized miniature M1 plants or growth of such plants to a density ten times that of standard growth conditions. Thus, Privalov et al, alone or in combination with other art, does not, and cannot render the claimed mutant miniature tomato plant lacking in novelty or obvious.

Thus, Applicant submits that the Examiner has failed to make a primae facie case of lack of novelty and/or obviousness. Withdrawal of the 102 and 103(a) rejections on the basis of Kush et al., Lahiri et al. and Privalov et al. is respectfully requested.

The Examiner's acknowledgement that claims 1, 3, 10, 12 and 13 are free of prior art of record is noted.

In view of the above amendments and remarks it is respectfully submitted that claims 1, 6 and 10, and all claims dependent therefrom are now in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,

Martin D. Moynihan

Martin D. Moynihan
Registration No. 40,338

Date: November 15, 2007

Enclosed:
One month's extension fee.